defendants entered on lands so withdrawn and started mining operations under the authority of the Federal statutes, and the United States now seek to enjoin mining operations. *Held*, Art. 4 § 3 of the Constitution gives Congress the exclusive right to dispose of public lands and though public officials may have the right in some cases to make a valid withdrawal, no adjudicated case is broad enough to justify such a large withdrawal, which in effect suspends the operation of the mineral laws. *United States* v. *Midway Northern Oil Co.* (D. C. 1914) 216 Fed. 802.

As a general rule the provision of the Constitution vests in Congress power over public lands "without limitation," *U. S.* v. *Gratiot*, 14 Pet. 526; *Van Brocklin* v. *State*, 117 U. S. 151; *Wisconsin R. R. Co.* v. *County*, 133 U. S. 496. But in two classes of cases withdrawals of public lands by the executive though not authorized by Congress, have been upheld, (1) where the lands prior to the withdrawal were being used for a public purpose, *Grisar* v. *McDowell*, 6 Wall. 363; (2) where the withdrawal was justified on the ground of effectuating some law in force at the time of the withdrawal, *Wolcott* v. *DesMoines Co.*, 5 Wall. 681. No executive officer has such general power, *So. Pac. R. R. Co.* v. *Bell*, 183 U. S. 675; *Brandon* v. *Ord*, 211 U. S. 11; *Osborn* v. *Forsythe*, 216 U. S. 571. Cases which have upheld the power have been cases in which comparatively small interests were involved, and the court in the present case was justified in holding that such a large withdrawal should have a positive and definite power to justify it.

CONSTITUTIONAL LAW—DOUBLE PUNISHMENT.—Plaintiffs in error were convicted on certain counts charging conspiracy to commit an offense against the United States in violation of § 5440 of the Revised Statutes, the offense consisting of the interstate transportation of explosives, and on certain other counts charging the aiding and abetting in the commission of offenses in such transportation of explosives in violation of §§ 232-235 of the Criminal Code; and were sentenced to distinct terms of imprisonment on both charges. *Held*, that the sentences so imposed do not constitute double punishment for the same offense. *Ryan* v. *United States*, (C. C. A. 7th Circuit, 1914), 216 Fed. 13.

§ 5440 requires for the completion of the crime of conspiracy an overt act by one or more of the conspirators. *Hyde* v. *United States*, 225 U. S. 347. The overt acts averred in the principal case were the sending of letters, and other acts apart from the actual carriage of explosives; therefore, proof of the crime charged under the "transportation counts" would not be necessary to make out the crime of conspiracy, nor would proof of the conspiracy be necessary to convict the separate defendants of the crime of transporting explosives. The decision is therefore clearly sustained, as against the contention of double punishment for the same offense, under the test approved in *Gavieres* v. *United States*, 220 U. S. 338, that the offenses are not identical, unless the evidence required to support a conviction on one charge would have been sufficient to warrant a conviction on the other. This rule has been variously stated. *Burton* v. *United States*, 202 U. S. 344, 381; *Wilson* v. *State*, 24 Conn. 57; *Morey* v. *Com.*, 108 Mass. 433; *Carter* v.

McClaughry, 183 U. S. 365, 395. 1 BISHOP, CR. LAW, § 1051. In the instant case, however, the court throws some doubt on the correctness of the decisions in *United States* v. *McKee,* 4 Dill. 128, 26 Fed. Cas. No. 15688, and *Ex parte Joyce,* 13 Fed. Cas. No. 7556. In the *McKee* case, in which it was held that the former conviction of defendant was a bar, the overt acts charged in the indictment for conspiracy on the former trial were the same acts for which a penalty is later sought to be recovered; clearly the evidence necessary to convict on the charge of conspiracy included evidence sufficient to sustain the action for the penalty. In the *Joyce* case, in which it was held that one could not be punished both on a charge of conspiracy to defraud the United States and also on a charge of failing to report a known violation of the revenue law, where such violation was the outcome of the very conspiracy in which defendant took part; there the evidence to prove the conspiracy must necessarily have proved the gist of the second crime, that is, knowledge of the attempt to defraud. Under the rule stated above, both of these cases would seem to be correctly decided and not to be in conflict with the principal case.

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—SALARIES — PENSION FUND.—The legislature of Illinois passed an act which went into effect, July 1, 1911, for the formation of a civil service pension fund, by the retention of $2.00 per month from the salary of all civil service employees. (Laws 1911, p. 158). Petitioner, a stenographer, at a salary of $80 per month secured by contract for a year from Jan. 1, 1911, on appeal raises the question of the constitutionality of the act. *Held* one has no property right in an unearned salary and even though the petitioner has no vested interest in the fund, he is not deprived of property without due process of law. The legislature may diminish the salary or abolish the office as the Civil Service Act confers this power. *Hughes* v. *Traeger,* (Ill. 1914), 106 N. E. 431.

Admitting the general rule that one can not have a property right in an unearned salary, it would seem that if the amount is deducted by the month at the rate of $2 per month, as the act provides, there would be a property right in the earned salary at the end of each month, the contract of employment for a fixed sum being untouched by the law. This presents a different situation from that presented if the legislature had simply reduced the salary of all civil service employees and provided that the sum of $2 per month for each employee should be set aside into a fund. The correct reason for the decision seems to be that it is a taking of property, but by due process, inasmuch as it was considered for the public benefit. *Davidson* v. *New Orleans,* 96 U. S. 97; *Hager* v. *Reclamation District,* 111 U. S. 701; *Marchant* v. *U. S.* 153 U. S. 380. In *State ex rel Ward* v. *Hubbard,* 22 Ohio C. C. (aff'd without opinion, 65 Ohio St. 574) and in *State* v. *Kurtz,* 21 Ohio C. C. 261, precisely similar questions under substantially like laws came before the court and in each instance the law was declared unconstitutional on grounds, among others, that property was taken without due process of law and this reason was based on the point that the salary of the petitioner was his property.